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17 *Lead Plaintiffs' Counsel*

18 **UNITED STATES DISTRICT COURT**  
 19 **NORTHERN DISTRICT OF CALIFORNIA**  
**SAN JOSE DIVISION**

20 **IN RE ANTHEM, INC. DATA BREACH**  
 21 **LITIGATION**

Case No: 15-md-02617-LHK (NC)

22 **DECLARATION OF EVE H. CERVANTEZ IN**  
 23 **SUPPORT OF FINAL APPROVAL OF**  
 24 **SETTLEMENT AGREEMENT AS AMENDED**  
 25  
 26  
 27  
 28

1 I, Eve H. Cervantez, declare as follows:

2 1. I am a member in good standing of the California State Bar and the bar of this  
3 Court, a partner at Altshuler Berzon LLP, and Co-Lead Plaintiffs' Counsel in this multi-district  
4 litigation. I have personal knowledge of the matters set forth herein, and could and would testify  
5 competently thereto if called upon to do so.

6 2. I submit this declaration in further support of final settlement approval, and  
7 specifically in support of final approval of the Settlement Agreement as amended by the April  
8 2018 Amendment to Settlement.

9 3. Attached hereto as Exhibit A is the April 18, 2018 Amendment to Settlement  
10 Agreement and Exhibits 13 and 14 thereto.

11 4. During the February 1, 2018 hearing, the Court expressed concern that the  
12 Settlement may have been structured to discourage the Court from cutting requested attorneys'  
13 fees by capping the maximum relief available to the Settlement Class. Although I am prohibited  
14 by the parties' mediation confidentiality agreement, the mediation privilege, and Fed. R. Evid.  
15 408 from disclosing the precise content of the multi-month and hard-fought negotiations leading  
16 to the final Settlement Agreement in this case, I unequivocally assure the Court that Plaintiffs'  
17 Counsel did not structure the Settlement to discourage the Court from cutting requested attorneys'  
18 fees by capping relief to the Settlement Class.

19 5. The Settlement necessarily allocated funds to different uses, including payment of  
20 claims for Out-of-Pocket Costs, payment for credit monitoring and fraud resolution services, and  
21 payment of claims for Alternative Compensation. Plaintiffs' intent was always to maximize  
22 benefits provided directly to the Settlement Class by allocating funds from one category to  
23 another in the event of excess, based on estimated response rates. Class Counsel expected a  
24 higher overall claims rate, including a higher claims rate for Alternative Compensation, and  
25 structured the original Settlement to accommodate that. Had the Alternative Compensation claims  
26 rate been even slightly higher, reductions in the attorneys' fee award would have gone directly to  
27 the Settlement Class, rather than to *cy pres*, under the original Settlement Agreement.

1           6.       To put this in perspective, Exhibit B attached hereto illustrates how small variances  
2 in the claims rate for Alternative Compensation affect the distribution of Settlement benefits  
3 under the original Settlement, and how the April Amendment improves the Settlement in response  
4 to the actual claims rates. The figures in each example are based on the Court awarding the  
5 maximum amount of attorneys' fees, costs, and service payments permitted under the Settlement  
6 Agreement (example one, as forecast) or the lower amount actually requested by Plaintiffs  
7 (examples two and three).

8           7.       Example one shows the distribution of benefits had 512,569 Class Members filed  
9 claims for Alternative Compensation (about 0.65 percent of the Settlement Class). In that case,  
10 each Alternative Compensation claimant would have received \$36, which would have effectively  
11 exhausted the Net Settlement Fund, leaving a \$16.00 remainder. In this scenario, were the Court  
12 to reduce the attorneys' fees award, any reductions up to \$9.2 million would have been used to  
13 extend credit monitoring and fraud resolution services in one month increments for up to two  
14 additional years. *See* Settlement Agreement § 7.1 (providing that any funds remaining after  
15 making allocated payments, including attorneys' fees under § 12.2, must be used to extend Credit  
16 Services for up to two years).

17           8.       If the Alternative Compensation claims rate were any higher than .65 percent of  
18 the Settlement Class, the Net Settlement Fund would not have been sufficient to pay \$36 to each  
19 Alternative Compensation claimant, such that reductions in attorneys' fees would first have gone  
20 to increase the Alternative Compensation benefits up to \$36 per claimant, and, after all  
21 Alternative Compensation claims had been paid at \$36 each, up to \$9.2 million in additional funds  
22 resulting from a reduction in attorneys' fees would have been used to extend credit monitoring  
23 and fraud resolution services in one month increments for up to two additional years. *See*  
24 Settlement Agreement §§ 5.3, 7.1 (Net Settlement Fund first used to pay Alternative  
25 Compensation claimants up to \$36; remainder to fund up to two years of Credit Services).

26           9.       Example two shows how settlement benefits are allocated under the original  
27 Settlement using the actual claims rate and Net Settlement Fund figures. The Net Settlement  
28 Fund is higher than in example one because Plaintiffs kept litigation expenses \$863,000 below the

1 amount permitted under the Settlement Agreement. The resulting \$19.315 million Net Settlement  
2 Fund is sufficient to award \$50 to each of the 137,243 Alternative Compensation claimants,  
3 leaving \$12.453 million. As in the previous example and, again, under the original Settlement,  
4 \$9.2 million of the remainder would be used to extend credit monitoring and fraud resolution  
5 services for two more years. The \$3.253 million residual (approximately 2.8% of the Settlement  
6 Fund) would go to *cy pres*, as would further additions to the Net Settlement Fund based on a  
7 reduction of requested attorneys' fees.

8 10. These examples illustrate that if the Alternative Compensation Claims Rate had  
9 been approximately 0.5% higher than it actually was (example one instead of example two), a  
10 reduction of up to \$9.2 million in requested attorneys' fees would have been used to extend credit  
11 monitoring and fraud resolution services, not for *cy pres*, under the original Settlement  
12 Agreement.

13 11. Example three illustrates allocation of funds under the April Amendment. As  
14 example three reflects, the April Amendment allocates Settlement Funds exactly as the original  
15 Settlement, except that it diverts to the Class Members what would have been a larger than  
16 expected *cy pres* payment.

17 12. As explained in more detail below, Plaintiffs' Counsel reasonably expected that the  
18 claims rate in Anthem would be higher than the claims rate in *Target* or *Home Depot*, given the  
19 difference in benefits offered, the difference in notice methods, and the fact that *Target* and *Home*  
20 *Depot* involved theft of payment card information (which can be easily changed) as opposed to  
21 the personally identifying information such as social security numbers and birth dates at issue in  
22 this case.

23 13. Although Plaintiffs had expected an even higher claims rate, the overall Anthem  
24 claims rate of 1.7% is over 7 times higher than *Target* (0.23%) and 8.5 times higher than the  
25 available figures for *Home Depot* (0.2%).

26 14. According to court filings, the Settlement in *In re Target Corporation Customer*  
27 *Data Security Breach Litigation*, Case 0:14-md-02522-PAM, Dkt. No. 615 (D. Minn.) provided a  
28 settlement fund of \$10 million to pay claims for out of pocket losses (capped at \$10,000 per class

1 member) for a class of over 97 million individuals. No credit monitoring was offered, and no  
2 cash was offered to class members who did not allege some sort of out of pocket loss, or time  
3 spent addressing unauthorized charges. Notice was sent via email to approximately 71 million  
4 class members (of which approximately 49 million did not bounce back and were presumably  
5 delivered), and via postcard to 12,086,442 class members for whom there was no email address.  
6 Declaration of Amy Lake Regarding Settlement Administration, submitted in *In re Target*  
7 *Corporation Customer Data Security Breach Litigation*, Case 0:14-md-02522-PAM, Dkt. No. 615  
8 (D. Minn.) on October 9, 2015. The notice was also posted on a settlement website and published  
9 in *Better Homes & Gardens* and *People* and via social media. Declaration of Shannon R.  
10 Wheatman, Ph.D on Implementation and Adequacy of Notice Plan, submitted in *In re Target*  
11 *Corporation Customer Data Security Breach Litigation*, Case 0:14-md-02522-PAM, Dkt. No. 616  
12 (D. Minn.) on October 9, 2015.

13 15. Ultimately, class members in *Target* filed 225,780 timely claims, a claims rate of  
14 0.23 percent. See Declaration of Amy Lake Regarding Settlement Administration, submitted in *In*  
15 *re Target Corporation Customer Data Security Breach Litigation*, Case 0:14-md-02522-PAM,  
16 Dkt. No. 615 (D. Minn.) on October 9, 2015.

17 16. According to court filings, in the settlement for *In re The Home Depot, Inc.*,  
18 *Customer Data Security Breach Litigation*, Case 1:14-md-02583-TWT, Dkt. No. 226-3 (N.D.  
19 Ga.), the approximately 61 million class members could submit claims for 18 months of identity  
20 monitoring, and could also draw upon a \$13 million fund for reimbursement of documented out-  
21 of-pocket losses and lost time (including up to two hours of undocumented time accompanied by  
22 documentation of other losses), capped at \$10,000 per class member. Class members without  
23 documented losses were not entitled to cash. Email notice was sent to approximately 61 million  
24 class members, posted on a settlement website, and published in *People* magazine and via social  
25 media. There was no direct mail notice. Declaration of Kenneth Jue on Behalf of Settlement  
26 Administrator Regarding Notice, submitted in *In re The Home Depot, Inc., Customer Data*  
27 *Security Breach Litigation*, Case 1:14-md-02583-TWT, Dkt. No. 226-3 (N.D. Ga.) on June 27,  
28 2016.

1 17. There is no public information on the final claims rate in *Home Depot* based on a  
2 claims-filing deadline of October 29, 2016, but as of July 27, 2016, approximately 127,527 claims  
3 had been filed. Supplemental Declaration of Kenneth Jue on Behalf of Settlement Administrator  
4 Regarding Requests for Exclusion and Claims, submitted in *In re The Home Depot, Inc.*,  
5 *Customer Data Security Breach Litigation*, Case 1:14-md-02583-TWT, Dkt. No. 245-1 (N.D.  
6 Ga.) on July 29, 2016. This is approximately 0.2 percent of the *Home Depot* class.

7 18. Plaintiffs have negotiated an extension of their contract with Experian to provide  
8 credit monitoring and fraud resolution services. Under that extension, Experian has agreed to  
9 provide credit monitoring to valid claimants and fraud resolution services to the entire Settlement  
10 Class, as provided in the April Amendment, on an indefinite basis, so long as there are funds  
11 remaining to pay for those extended services. The cost for a fifth year of credit monitoring and  
12 fraud resolution services will remain \$4.6 million per year (which can be prorated for full  
13 months), and the cost for the sixth year, and any additional years thereafter, will be \$5 million per  
14 year (which can be prorated for full months).

15 19. All Parties have fully negotiated and agreed to all terms of the April Amendment,  
16 and are prepared to execute the April Amendment upon the Court's approval. Plaintiffs have  
17 submitted an unexecuted version of the April Amendment for the Court's review so that the Court  
18 may choose to approve either the original settlement or the settlement as amended.

19 I declare under penalty of perjury that the foregoing is true and correct. Executed this  
20 April 18, 2018 at San Francisco, California.

21 /s/ Eve H. Cervantez  
22 Eve H. Cervantez